In the Supreme Court of the United States

October Term, 1969

CASE No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,
Petitioner,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVISION 823 of the BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an offical of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. W. RUTLAND, individually and as a member of said Brotherhood,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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INDEX

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (cont.)

TABLE OF AUTHORITIES (cont.)

STATUTES

OTHER AUTHORITIES

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QUESTIONS PRESENTED

1. Where a Federal District Court possessed of subject matter jurisdiction over a controversy has entered an order containing a preliminary delineation of the rights of the parties under controlling federal law, may the Court "in aid of its jurisdiction" and "to protect or effectuate its judgment", within the meaning of 28 U.S.C. §2283, enjoin the enforcement of a subsequent state court injunction against the identical conduct based upon inapplicable state law, which state injunction would nullify the District Court's prior findings and order?

2. Under the circumstances presented in Question 1, does the Norris-LaGuardia Act operate to prohibit the District Court from enjoining state proceedings "in aid of its jurisdiction" and "to protect or effectuate its judgment"?

STATEMENT

It is safe to assert that this Court has devoted more time and attention over the past several terms to the problems arising from the Florida East Coast (FEC) Railway's succession of labor disputes, than to any other single class of labor problems. The initial decision of this Court in *Brhd. of Ry. and S.S. Clerks v. Florida E.C. Ry. Co.*, 384 U.S. 238 (1966) recounts the early history of the FEC dispute which began as a strike by the FEC's non-operating employees in January, 1963. Since the earliest days of the dispute, when FEC resumed its operations[1] using striker

[1]Such operations were, of course, in violation of the Railway Labor Act until the FEC was enjoined prospectively almost two years later, *Id.*

replacement crews, the striking employees have sought to bring their economic power to bear on the points where FEC receives and delivers freight with its connecting carriers, the points of interchange.

These efforts of the striking unions to picket the points of interchange, where FEC trains daily operate to receive and deliver the freight traffic which enables it to operate unimpeded in the face of continuing lawful strikes, have spawned prolific litigation. The FEC operates primarily in a straight north-south line along the east coast of the State of Florida. At the FEC's southern terminus where it interchanges freight with the Broward County Port Authority,[2] and at its northern terminus in Jacksonville where FEC interchanges freight on the premises of the Jacksonville Terminal Company with the Seaboard Air Line Railroad (SAL), and Southern Railway, and on the premises of the Moncrief Yard where FEC interchange is performed with the Petitioner, Atlantic Coast Line Railroad Co. (ACL), picketing at each interchange point has involved its own lengthy injunctive proceeding.

Picketing of the interchange carried out on the premises of the Jacksonville Terminal Company was, of course, three times before this Court.[3]

The decision of this Court late in the last term, *Brotherhood of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 89 S.Ct. 1109 (1969), in which certiorari was granted "to determine the extent of state power to

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[2]See, *Brotherhood of Locomotive Firemen & Enginemen v. Florida East Coast R. Co.*, 346 F. 2d 673 (CA 5 1965).

[3]*Atlantic C.L.R. Co. v. Brhd. of Railroad Trainmen*, 385 U.S. 20, (1966) *affing* 362 F. 2d 649 (CA 5 1966); *Brhd of Railroad Trainmen v. Jacksonville Terminal Co., certiorari denied*, 385 U.S. 935 (1966); *Brhd. of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969).

regulate the economic combat of parties subject to the Railway Labor Act," 89 S.Ct. at 1112, should, we submit, have written an end to the Florida state courts granting of injunctions based upon Florida state law against picketing by parties whose disputes have run the gamut of the Railway Labor Act's procedures. By reason of the intransigence of the Florida state courts, however, this was not to be.

In this case a Federal District Court, having entered an Order on April 26, 1967 (Appendix A to Petition) preliminarily finding that the picketing by the respondent union of ACL's Moncrief Yard is lawful and protected under Federal law, has found it necessary to enjoin the enforcement of a subsequent state court injunction, which prohibits the picketing under Florida state law, in order to protect and effectuate the Federal court's order and in aid of the Federal court's jurisdiction.

Background

In May, 1966, the picketing out of which the *Jacksonville Terminal* cases arose transpired at the premises of the Jacksonville Terminal Company. As noted in the opinion of this Court, the unions there involved, upon the FEC instituting its unilateral revision of rules, rates of pay and working conditions applicable to their crafts, "responded by calling a strike and thereafter by picketing the various locations at which FEC carried on its operations, including the premises of the respondent, Jacksonville Terminal Company." 89 S.Ct. at 1112. As further noted by the Court, "FEC carries on substantial daily operations at the terminal, interchanging freight cars with the other railroads; it accounts for approximately 30% of all interchanges on the premises." 89 S.Ct. at 1112.

While the *Jacksonville Terminal* litigation wound its slow way through the Florida appellate courts to this Court, on March 12, 1967 the last operating craft union which maintained "regular" contractual rights with the FEC, respondent Brotherhood of Locomotive Engineers (BLE), called a strike of its members against FEC in response to the FEC's identical unilateral revision of the rules, rates of pay and working conditions, this time applicable to locomotive engineers. This dispute had been fully processed through the procedures of the Railway Labor Act, and the FEC had declined binding arbitration, which BLE had accepted (McRae Tr. 129-133).

Following the commencement of the strike, on April 23, 1967 while the state court injunction ultimately reversed by this Court was still in effect prohibiting picketing of the Jacksonville Terminal Co., BLE began to picket the employee entrance to the Moncrief Yard where all FEC interchange with the ACL daily takes place.

The April 26, 1967 Order

This case was commenced by ACL on April 25, 1967, by the filing of a Complaint (Record 1-16) in the United States District Court for the Middle District of Florida, seeking an injunction and praying for general relief against the picketing activities of respondents at Moncrief Yard. The picketing was alleged to be in violation of the Railway Labor Act, 45 U.S.C. §151 et seq., and the Interstate Commerce Act, 49 U.S.C. §1 et seq. The jurisdiction of the Court was specifically invoked by the plaintiff ACL, under 28 U.S.C. §§ 1331 and 1337.

The plaintiff's Motion for a Preliminary Injunction was brought on for hearing on the same day, and a full evidentiary hearing was held by the Court including the testimony of five ACL officials and of the BLE officer in

charge of the picketing. The testimony of the ACL officials showed that FEC engines and crews daily operate across the tracks of the Jacksonville Terminal Company and onto the tracks of the Moncrief Yard where they deliver freight to and pick up freight from the ACL. (McRae Tr. 32). In the words of L. T. Andrews, ACL General Manager:

> "The use of the Moncrief Yard tracks for interchange purposes, on the basis of the present day operations, is a part of the FEC operation."
>
> * * *
>
> "Q. And if they did not use it everyday they wouldn't get any freight from ACL?
> A. Not under the basis of the present operating conditions." (McRae Tr. 103)

FEC engines and crews were shown to daily operate over two-thirds of the length of the Moncrief Yard (McRae Tr. 102). All FEC interchange in the Jacksonville area was shown to take place with the SAL and Southern on the premises of the Jacksonville Terminal Co., but with the ACL entirely within the premises of the Moncrief Yard (McRae Tr. 100). Use of the Moncrief Yard interchange facility by FEC was shown to account for 60% of all freight received by FEC from the North (McRae Tr. 137). On the basis of the evidence presented, the District Court on the following day, April 26, 1967 entered its Order denying the application of the ACL for temporary injunctive relief. (Appendix A to Petition, pp. 1a-5a)

Although ACL repeatedly in its Petition (pp. 10, 21, 22, 23, 24, 25, 26, 27) characterizes this Order as simply involving a finding by the District Court that it was precluded by the Norris-LaGuardia Act, 29 U.S.C. §101 et seq.,

from granting injunctive relief, examination of the five-page Order demonstrates that it was, in fact, as the District Judge himself later characterized it, a preliminary "delineation of rights of the parties" (Exhibit D to Petition; Order June 19, 1969, p. 18a) under controlling federal law, *including Section 20 of the Clayton Act*, 29 U.S.C. §52 (Appendix A to Petition, Conclusions of Law, paragraph 7, p. 4a).

In this Order the District Court held that it had jurisdiction of the case under 28 U.S.C. §1337. (*Id.*, Conclusion of Law, paragraph 1 p. 3a).

The Court further specifically dealt with the ACL's contention that the respondents' picketing was in violation of the Railway Labor Act (*Id.*, Conclusions of Law, paragraphs 4 and 5, p. 4a) and rejected that contention.

Finally the Court held that in addition to the Norris-LaGuardia Act, *Section 20 of the Clayton Act*, 29 U.S.C. §52, was applicable to the conduct of the respondents. (*Id.*, Conclusions of Law No. 7, p. 4a) This section of the Clayton Act provides that the conduct specified within its terms, which includes "* * * ceasing to perform any work or labor, or * * * recommending, advising, or persuading others by peaceful means so to do," and "peacefully persuading any person to work or abstain from working," shall *not* "* * * be considered or held to be violations of any law of the United States." 29 U.S.C. §52. *United States v. Hutcheson*, 312 U.S. 219 (1941).

In light of this finding, there can be no question that the District Court, as it later expressly stated, (Order, June 19, 1969, Appendix D to Petition, p. 18a) delineated the rights of the parties to the case which was properly before the Court. No appeal was taken from this Order

by ACL, and ACL does not challenge in this Court, as it cannot, the District Court's findings of fact and conclusions of law in the April 26, 1967 Order. We can only urge the Court to examine this Order for itself to determine whether its characterization by the ACL or by the District Judge who entered it, is correct.

The State Court Injunction — Immediately following the entry of the April 26, 1967 Order by the Federal District Court, the ACL filed another Complaint in the Circuit Court for the Fourth Judicial Circuit in and for Duval County, Florida, against respondents, seeking an injunction based upon state law against respondents' identical picketing activities.

The hearing before the state court was essentially identical with the previous hearing before the Federal Court.[4] The opposite result however was reached by the state court judge, who entered an Order for Temporary Injunction on May 3, 1967 enjoining respondents' conduct based upon the application of Florida state law. (Appendix B to Petition).

By agreement between counsel, no action was taken in the state court case while the companion litigation involving the Brotherhood of Railroad Trainmen's May, 1966 picketing of the Jacksonville Terminal Company made its way to this Court for determination of the scope of railway labor's self-help rights and the law (state, federal or both) applicable thereto.

The opinion of this Court in the companion litigation, *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969) was issued on March

[4]Compare Transcript of Hearing, April 25, 1967, (McRae Tr.) with the Transcript of Hearing, May 1, 1967 (Luckie Tr.).

25, 1969 and rehearing was denied by the Court on May 5, 1969. While, to be sure, this case was decided by a narrowly divided Court, it may not, under our judicial system, be supposed that such a decision has less efficacy than do those decided by a unanimous court. With this decision having so recently been rendered by the Court, we would not presume to undertake a detailed explication.

We submit, however, as we have since Mr. Justice Harlan's opinion for the Court was rendered, that the holding of the Court is to be found in the concluding portion of the opinion, designated Roman numeral VIII, 89 S.Ct. at 1122-24. And specifically that the controlling federal law under the Railway Labor Act:

> "* * * is to allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law. Hence, until Congress acts, picketing — whether characterized as primary or secondary — must be deemed conduct protected against state proscription. * * * Any other solution — apart from the rejected one of holding that *no* conduct is protected — would involve the courts once again in a venture for which they are institutionally unsuited." 89 S.Ct. at 1123-24.

Following the denial of rehearing by this Court in the *Jacksonville Terminal* case, respondents moved in the state court for the dissolution of the state court injunction, which was bottomed solely upon the application of Florida state law to respondents' picketing. The state court judge, however, decided to ignore the holding of this Court in the

Jacksonville Terminal case, and in a remarkable letter opinion (Appendix C to the Petition) announced his decision to continue the state court injunction based upon Florida state law in the face of what even he termed the "final conclusion" of this Court. (*Id.*, p. 14a).

Presented with this display of complete intransigence on the part of the state court, respondents then filed a Motion for Preliminary Injunction in the pending Federal District Court action against the Petitioner's enforcement of the state court injunction, which clearly flouted and nullified the previously entered Order of the District Court of April 26, 1967, and impinged upon and violated the jurisdiction of the District Court to finally determine the rights of the parties to the case then pending before it, under controlling federal law.

On June 19, 1969 the District Court entered the Order which is the subject of the Petition, enjoining the ACL from giving effect to the state court injunction. (Appendix D to the Petition). In this Order the District Court specifically held[5]:

> "In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, is an integral and necessary part of [Florida East Coast Railway Company's] operations. Finding of Fact No. 5. The Court concluded furthermore that Defendants herein are now free to engage in self-help. Conclusion of Law No. 3.

[5]Compare the first sentence quoted from the District Court Order with the tortured distinction attempted to be made in the Petition, p. 30, fn. 14 as to the difference between a finding that Moncrief Yard is an integral part of FEC's operations, and "the use" of Moncrief Yard as such integral part.

The injunction of the state court, if allowed to continue in force, would effectively nullify this Court's findings and delineation of rights of the parties. The categorization of Defendants' activities as secondary does not alter this state of affairs. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, ____U.S. ____, 22 L.Ed.2d 344 (1969). The prohibition of 28 U.S.C. §2283, therefore, does not deprive this Court of jurisdiction to enter the injunction in this instance. *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501 (1954); *Brotherhood of Ry. Trainmen* v. *Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968)." Appendix D to Petition, pp. 17a-18a.

Following the entry of the District Court's Order of June 19, 1969, the petitioner sought a stay pending appeal from the District Court, from a single judge of the Court of Appeals, and from a three judge panel of the Court of Appeals. All were unanimous in denying the requested stay. The Court of Appeals panel also denied an application for stay pending certiorari.

On July 15, 1969, petitioner presented an application for stay to Mr. Justice Black, who granted a stay of enforcement of the District Court's Order pending the petition for certiorari, and, if granted, pending the Court's judgment, on July 16, 1969. (Appendices F and G to Petition). Meanwhile the Court of Appeals on July 17, 1969 entered its judgment of affirmance of the District Court's Order, based upon a stipulation of the parties which had been filed on July 16, 1969. (Appendix H to Petition, p. 25a).

ARGUMENT

It should be noted again and emphasized at the outset of the argument that a fundamental premise of the petitioner's argument is false. This is their repeated assertion that the 1967 Order of the District Court was based solely upon the Norris-LaGuardia Act and did not contain any further substantive delineation of the rights of the parties under controlling Federal law. As we have noted above, this Order which preceded this Court's *Jacksonville Terminal* decision by two years, contained a finding that Section 20 of the Clayton Act, 29 U.S.C. §52, was applicable to the facts before the Court, and this statute provides that all such conduct, specified within its terms, shall not "* * * be considered or held to be violations of any law of the United States." See, *United States v. Hutcheson*, 312 U.S. 219 (1941).

This finding of the District Court in its 1967 Order is *not* subject to review by this Court in this case. Petitioner sought no review of that order, the time for appeal has long since passed, and petitioner has admitted that it may not now challenge the contents of the 1967 order.[6]

Moreover, the District Court itself, contrary to petitioner's assertion that "The District Court in 1967 * * * could not and did not purport to define the ultimate Federal legal rights of the parties," (Petition, p. 25) held that the 1967 order was indeed a "delineation of rights of the parties." (Appendix D to Petition, p. 18a). Having

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[6]See, Petitioner's Application for an Order Staying Enforcement of the Injunction Order, Dated June 19, 1969, presented to Mr. Justice Black, p. 9.

invoked the jurisdiction of the Federal District Court to determine the legality of respondents' picketing, and the Court having found such conduct legal under controlling federal law and having preliminarily delineated the rights of the parties under federal law, petitioner is bound by such determinations. Although prior to this Court's decision in *Jacksonville Terminal* the application of state law as well as federal law to such conduct was arguable, there is now no room for state proscription, and the delineation of rights under federal law must control. The District Court's Order of June 19, 1969 was clearly proper in aid of the Court's jurisdiction to finally determine the rights of the parties, and to protect and effectuate its preliminary determination of rights in the April 26, 1967 Order. The Court's action falls clearly within the express exceptions provided in 28 U.S.C. §2283, and is in complete harmony with the decisions of this Court.

A. *The Order of June 19, 1969, is Specifically Authorized Under 28 U.S.C. §2283 and is in Harmony with this Court's Decisions.*

Petitioner's primary argument is that the decision of the Court below is in conflict with *Amalgamated Clothing Workers of America v. Richman Brothers*, 348 U.S. 511 (1955). Their argument in this regard is an amalgam of oversimplification and distortion. *Richman Brothers* is said by Petitioner to teach "* * * that the Federal district courts do not sit as appellate courts over the state tribunals in cases where preemption of state court remedies in labor and related matters are concerned." (Petition, p. 18.) Obviously the Federal district courts do not sit as appel-

late courts, however, it is a quite different matter where a Federal District Court having exercised its subject-matter jurisdiction over a controversy and having entered an order delineating the rights of the parties to the controversy under controlling federal law, must act to protect its jurisdiction and its order. The District Court below rejected petitioner's argument based upon *Richman Brothers* and held that the present case was governed by this Court's decision in *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954).

Both *Richman Brothers* and *Capital Service* turn on the specific exception to §2283 which permits the District Court to issue injunctions "where necessary in aid of its jurisdiction." In neither case had a previous order been entered by the Federal district court, so no consideration was given to the specific statutory exception for enjoining state proceedings "to protect or effectuate its judgments," which we discuss below at pages 17 through 19.

The simple yet vital distinction between *Richman Brothers* and *Capital Service*, uniformly recognized by the courts (*E.g., United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F. 2d 320, 332 *cert. denied*, 395 U.S. 905 (1969)), and commentators (*E.g.*, 1A Moore's Federal Practice, pp. 2320, 2323) is that in *Richman Brothers* the district court had no subject matter jurisdiction over the controversy, such jurisdiction being preempted by the exclusive jurisdiction of the National Labor Relations Board, while in *Capital Service* the district court *had* such subject matter jurisdiction, and could enjoin the state court proceedings in aid thereof.

In *Capital Service* the Court held:

> "The state court injunction restrains conduct which the District Court was asked to enjoin in the §10(l) proceeding brought in the District Court by the Board's Regional Director against the union. * * * If the state court decree were to stand, the Federal District Court would be limited in the action it might take. If the Federal District Court were to have unfettered power to decide for or against the union, and to write such decree as it deemed necessary in order to effectuate the policies of the Act, it must be freed of all restraints from the other tribunal. To exercise its jurisdiction freely and fully it must first remove the state decree. When it did so, it acted 'where necessary in aid of its jurisdiction.'" 347 U.S. at 505-6.

In *Richman Brothers* however, it was not the Board but a private litigant who sought to invoke the jurisdiction of the district court. Here the court stated:

> "Congress explicitly gave such jurisdiction to the district courts only on behalf of the Board on a petition by it or 'the officer or regional attorney to whom the matter may be referred'. §10(j)(l), 61 Stat. 149, 29 U.S.C. §160(j)(l). To hold that the Taft-Hartley Act also authorizes a private litigant to secure interim relief would be to ignore the closely circumscribed jurisdiction given to the District Court and to generalize where Congress has chosen to specify.
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> * * *

"3. The exception to §2283 which permits the District Court to issue injunctions 'where necessary in aid of its jurisdiction' remains to be considered. In no lawyer-like sense can the present proceeding be thought to be in aid of the District Court's jurisdiction. Under no circumstances has the District Court jurisdiction to enforce rights and duties which call for recognition by the Board. Such non-existent jurisdiction therefore cannot be aided.

Insofar as protection is needed for the Board's exercise of its jurisdiction, Congress has, as we have seen, specifically provided for resort, but only by the Board, to the District Court's equity powers. Since the very presupposition of this proceeding is that jurisdiction of the subject matter of which the employer complained was in the Board and not in the state court, any aid that is needed to protect jurisdiction is the aid which the Board may need for the safeguarding of its authority. Such aid only the Board could seek, and only if, in a case pending before it, it has satisfied itself as to the adequacy of the complaint." 348 U.S. at 517, 519-20.

All of the Court of Appeals cases which petitioner cites as following *Richman Brothers* and alleges are in conflict with the decision below[7] are cases in which the Federal district courts possessed no jurisdiction of the subject-matter of the case, and therefore could issue no injunction in aid thereof.

[7]Petition, p. 20.

Under the scheme established by the Railway Labor Act, 45 U.S.C. §151 et seq., however, there is no agency comparable to the NLRB and it is the Federal district courts which are the primary arbiters of law in the exercise of their jurisdiction over actions arising under " * * * any Act of Congress regulating Commerce", 28 U.S.C. §1337. *International Ass'n of Machinists v. Central Airlines*, 372 U.S. 682 (1963). This Court has recently reaffirmed "the primacy of the federal judiciary in deciding questions of federal law," within their subject-matter jurisdiction, notwithstanding the limitations of the Norris-LaGuardia Act. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557,560 (1968).

Private litigants under the Railway Labor Act may freely invoke the jurisdiction of the Federal District Court, the petitioner did so in this case, and the Court assumed jurisdiction of the controversy. Once the Court has assumed such jurisdiction it clearly is entitled under the Railway Labor Act, as under Taft-Hartley, " * * * to have unfettered power to decide *for* or against the union," *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 505. Merely because petitioner disagrees with the District Court's decision for the union does not deprive the Court of jurisdiction to decide the case or the power to enjoin the state court proceedings in aid thereof. The District Court's power to decide for the union, and its decision for the union, plainly were nullified by the state court injunction, and an injunction "in aid of its jurisdiction" was clearly proper.

The second basis relied upon by the District Court below in support of its June 19, 1969 order was the specific statutory exception which authorizes injunctions

against state proceedings by the Federal Courts "to protect or effectuate its judgments." 28 U.S.C. §2283. In this regard the District Court cited the recent opinion of the Court of Appeals, Fifth Circuit in *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied* 395 U.S. 905 (1969).

In *Galveston Wharves* the Court of Appeals affirmed an injunction against the enforcement of a state court injunction based upon Texas state law which prohibited peaceful picketing by a union in a Railway Labor Act dispute. The specific order as to which the Court held injunctive relief was proper to protect and effectuate, was one merely imposing a general duty to bargain in accordance with the requirements of the Railway Labor Act, and not as in the present case a specific federal judgment concerning the identical conduct enjoined by the state court, and finding such conduct to be legal under controlling federal law. Thus in the present case it is even more imperative than in *Galveston Wharves* for injunctive relief to prevent what the District Court specifically found:

> "The injunction of the State Court, if allowed to continue in force, would effectively nullify this Court's findings and delineation of rights of the parties." Appendix D to Petition, p. 18a.

Moreover, the District Court below, the Court of Appeals, Fifth Circuit, and this Court have all entered and affirmed Orders which require, *inter alia*, the Florida East Coast Railway to bargain in good faith with its unions. E.g. *United States v. Florida E.C. Ry. Co., Case No.* 64-107-Civ-J (U.S.D.C. M.D. Fla. 1964); *aff'd*, 348 F.2d 682 (CA 5 1965); *aff'd sub nom, Brhd of Ry. & S.S.*

Clerks v. Florida E.C. Ry. Co., 384 U.S. 238 (1966).[8] Just as in *Galveston Wharves* this duty to bargain is, in fact, rendered impotent by the issuance of state court injunctions which prevent the unions from the exercise of their full self-help rights as determined by this Court and the District Court. And the fact that the state court deems the picketing involved in this case "secondary" is of no consequence under the decision of this Court in *Jacksonville Terminal*.

In addition no difficulty is presented by the fact that the April 26, 1967 Order of the District Court is not a final judgment, in order for it to be entitled to protection and effectuation under the terms of 28 U.S.C. §2283. *Sperry Rand Corporation v. Rothlein*, 288 F.2d 245 (CA 2 1961); *See, Ex Parte Simon*, 208 U.S. 144 (1908).

B. *The Order of June 19, 1969 Was Not Prohibited by the Norris-LaGuardia Act.*

Petitioner's second argument is that the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq., operates to prohibit the District Court from enjoining the enforcement of the state court injunction under the facts of this case. This argument simply and completely ignores both the specific language of the Act, and the manifest intent and spirit of the framers of this legislation. The right to unfettered enforcement by an employer of a state court injunction which invades the subject-matter jurisdiction properly assumed by a Federal District Court, and nullifies a previous District Court Order is nowhere to be found as conduct protected by the Norris-LaGuardia Act.

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[8]This case remains pending in the District Court below upon issues of FEC contempt of the Preliminary Injunction, and of the issuance of a Permanent Injunction.

Section 4 of the Act enumerates a code of protected labor conduct, placed beyond the reach of injunctive relief except in accordance with the procedures and conditions specified in Section 7, in response to the specific abuses which Congress found had been practiced by the Courts.

ACL has for the first time in the Petition[9] seized upon Section 4(d), 29 U.S.C. §104(d), as the prohibition of the Act which is allegedly applicable and is violated by the District Court's Order prohibiting the enforcement of the state court injunction. This provision is obviously inapplicable even giving the language a purely literal reading and even without reference to the purposes of the Act, for petitioner is not " * * * *aiding* any person participating or interested in any labor dispute", but is rather itself seeking the enforcement of the state court injunction.[10]

The Norris-LaGuardia Act was, of course, passed to put an end to the abusive practice of lending the injunctive powers of the courts to aid the "owners of property" and "employers of labor" 29 U.S.C. §102, in their disputes with their workers. The statement of the public policy of the United States, enacted in Section 2 of the Act, 29 U.S.C. §102, clearly sets forth this Congressional intention. As this Court has repeatedly held:

> "The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Con-

[9]See Reply Memorandum for Petitioner on Application for Stay, filed July 16, 1969, p.5.

[10]In the Congressional debates the injunctive abuses which this provision was drafted to meet were explained by Congressman Garber: "Has not the employee the right to accept the aid of his friends in a suit at law?" 75 Cong. Rec. 5492 (1932).

> gress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed by unduly restrictive judicial construction. * * * The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized *trade union activities* as redefined by the later Act." *United States v. Hutcheson*, 312 U.S. 219, 236 (1941). (Emphasis added).
>
> There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted. Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of federal courts; it is one of freedom of association, organization, representation and negotiation on the part of *workers. Order of Railroad Telegraphers v. Chicago & N.W.R. Co.*, 362 U.S. 330, 335-6 (1960). (Emphasis added).

The provisions of the Act have been squarely held to be inapplicable as applied to the actions of " * * * employers of labor" within Section 2. *Brotherhood of Locomotive Engineers v. Baltimore and Ohio Railroad Company*, 310 F.2d 513, 517-518 (CA 7 1962).

The District Court upon its finding that a stay of the state proceeding was required in aid of its subject matter jurisdiction and to protect and effectuate its earlier judgment was clearly entitled to accomplish this purpose,

which is in no way related to the language or purposes of the Norris-LaGuardia Act, by the issuance of the June 19, 1969 Order.

The District Court by the issuance of this Order was, in addition, enforcing respondents' self-help rights under the Railway Labor Act, as established by this Court's opinion in *Jacksonville Terminal*. As early as 1936, in *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, this Court held that in order to avoid the destruction of rights created under the Railway Labor Act, the Norris-LaGuardia Act must be accommodated with the scheme established under the Railway Labor Act. See also, *Brotherhood of R. Trainmen v. Howard* 343 U.S. 768 (1952); *Brotherhood of R. Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30 (1957).

CONCLUSION

Certiorari is unwarranted in this case. The decisions of the federal courts below are plainly correct. This Court has recently resolved the substantive issue involved in this case by its *Jacksonville Terminal* decision, and has recently denied certiorari in a case raising identical procedural questions, *United Industrial Workers v. Board of Trustees of Galveston Wharves, Id.*

The law applicable to the economic combat of the parties to a Railway Labor Act dispute is solely federal law. And where a federal court has taken subject matter jurisdiction over such a controversy and has entered an order delineating the rights of the parties, it is, we sub-

mit, totally proper for the federal court under 28 U.S.C. §2283 and the Norris-LaGuardia Act to enjoin the conflicting state proceeding.

In weighing the equities involved in granting the injunction below, the District Court properly considered the plight of the individual working men involved in the FEC dispute, many of whom have been on strike for as much as six and a half years. The slow process of obtaining a decision by this Court establishing the scope of their self-help rights was completed with the Court's decision in *Jacksonville Terminal*. The harm which is caused to them by the continuing delay in permitting them to exercise their rights need not be elaborated.

Respectfully submitted,

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